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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,814	09/23/2003	E. Kent Miller	AGTZ 2 00052	6991
27885	7590	03/16/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			TRIEU, THERESA	
			ART UNIT	PAPER NUMBER
			3748	

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/669,814

Applicant(s)

MILLER ET AL.

Examiner

Theresa Trieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15 is/are allowed.
- 6) ☒ Claim(s) 1, 6-10, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This Office Action is responsive to the applicants' amendment filed on August 3, 2004.

Claims 1, 3 and 7 have been amended. Claim 2 has been canceled. Claims 16 and 17 have been added. Thus, claims 1 and 3-17 are pending in this application.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the vane assembly" in line 2. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claims 1, 6 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kiekhaefer (Patent Number 3,211,103).***

Regarding claims 1, 6 and 16, as shown in Fig. 1, Kiekhaefer discloses a variable displacement vane pump, comprising: a housing having an inlet (7) and an outlet (8)

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communicating with a pump chamber (4) formed in the housing; a rotor (9) having at least one generally radially extending slot (14); a rocker member (12) having a curved surface region pivotally mounted within the slot of the rotor; the rocker (12) having a bearing surface (not numbered; however, clearly seen in Fig. 1) that bears against the arcuate surface; a vane assembly (12) including a hydrostatic pad (13).

***Claims 1, 6 and 16 are rejected under 35 U.S.C. 102(b) as clearly being anticipated by Feuerheerd (Patent Number 1,700,038).***

Regarding claims 1 and 16, as shown in Figs. 10-12, Feuerheerd discloses a variable displacement vane pump, comprising: a housing having an inlet (56) and an outlet (not numbered; however, clearly seen in Fig. 11) communicating with a pump chamber (55) formed in the housing; a rotor (a) having at least one generally radially extending slot (58); a rocker member (b, f, 54) having a curved surface region pivotally mounted within the slot of the rotor; the rocker (b, f, 54) having a bearing surface (not numbered; however, clearly seen in Fig. 1) that bears against the arcuate surface.

***Claims 7-10 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansen et al. (Hansen) (Patent Number 6,398,528).***

Regarding claim 7, as shown in Fig. 1, Hansen discloses a variable displacement vane pump, comprising: a housing having an inlet (22, 24) and an outlet (26) communicating with a pump chamber (46) formed in the housing; a rotor (36) having at least one generally radially extending slot (38); and a vane assembly (40) pivotally received in each slot; the vane assembly inner surface (not numbered; however, clearly seen in Fig. 1) and rotor recessed wall (38a, 38b) define a first pumping chamber (39), and the vane assembly outer surface, the rotor peripheral

surface and the housing wall define a second pumping chamber (46); wherein a stop member (42) associated with at least one of the inner surface of the vane assembly and the recessed wall (38a, 38b) of the rotor for allowing fluid to pass in and out of the first pumping chamber.

Regarding claims 8-10 and 17, Hansen further discloses wherein the recessed wall (25) comprises a driving wall portion (not numbered; however, clearly seen in fig. 1) having an arcuate bearing surface that receives the vane assembly (40); the recessed wall further comprising an arcuate leading wall portion (not numbered; however, clearly seen in Fig. 1); the stop member (42) extending from inner surface of the vane assembly.

#### ***Allowable Subject Matter***

2. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. Claims 11-15 are allowed.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 3-17 have been considered but are moot in view of the new ground(s) of rejection.

Applicant states that this limitation being added to claim 1 is similar to original claim 2, which was to include allowable subject matter. The examiner respectfully disagrees.

The examiner states that claim 2 would be allowable if rewritten in independent form including *all of the limitations of the base claim and any intervening claims*. However, applicant has been removed the limitation of “a vane assembly pivotally received in each slot” in the

claim 1 and amended claim 1 with limitation of claim 2. Therefore, claim 1 does not patentably define over the references as set forth in the above rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


### ***Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TT

  
Theresa Trieu  
Primary Examiner  
Art Unit 3748